

REMARKS

Applicant appreciate the Examiner's thorough examination of the present application. Applicant acknowledges that the Examiner has withdrawn the rejection under 35 U.S.C. §102 based on Steiner. Applicant acknowledges primary reliance on the new reference identified as Weidman cited in the present Office action.

Applicant acknowledges the rejections of the previously amended claims under 35 U.S.C. §103. Applicant respectfully requests favorable reconsideration of the claims based on the amendments and remarks set forth herein.

Rejections Under 35 U.S.C. §103

The Office action includes rejections in two instances (page 2 - paragraph 2 and page 3 -- paragraph 4) under 35 USC 103. Another rejection has been asserted under 35 U.S.C. §102(b) "as being anticipated by Bailleux et al. in view of Weidman." (page 3, paragraph 1). Applicant respectfully requests clarification of this rejection. It is believed that this rejection is a rejection under 35 U.S.C. §103 based on the combination of Bailleux et al., Weidman and Steiner since Steiner is also identified in this rejection (page 3, paragraph 4).

Applicant respectfully asserts that all of the claims amended herein overcome and are allowable over the rejections under 35 U.S.C. §103 since all three references fail to provide a *prima facie* basis in support of the rejection under 35 U.S.C. §103 and such references may teach away from the solution provided by the amended claims.

With regard to the rejections under 35 U.S.C. §103(a), it is respectfully submitted that Applicants' claims are patentable, as the rejections and cited references fail to establish a *prima facie* case of obviousness. According to Section 706.02 (j) of the MPEP the Examiner must meet three basic criteria to establish a *prima facie* case of obviousness:

- (1) first, there must be some reasonable suggestion or motivation in the prior art to modify the reference or to combine the reference teachings;
- (2) second, there must be reasonable expectation of success in obtaining the claimed invention based upon the references relied upon by the Examiner; and
- (3) third, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations.

MPEP Section 706.02(j) further requires that the teaching or suggestion to make the modification or reference combination and the expectation of success, must be found in the prior art, and may not be based upon the Applicants' disclosure.

In each of the rejections includes and relies upon the Weidman reference. The Weidman reference shows a beverage brewer which includes an integral reservoir which is contained within the brewer housing for holding a volume of beverage, the reservoir is not separable from the brewer and must be retained as an integral piece thereof as described in the Weidman reference. As such, the reservoir is not a separable server which is intended to be moved away from the brewer. In contrast, the reservoir in Weidman must stay with the brewer head, heat pump, unheated water reservoir and other components. In this regard, Weidman cannot be used to create multiple batches of beverage into separate servers but is limited and must be used with the brewer.

Weidman also fails since it does not use a heater attached to the outside bottom surface of the reservoir for transferring energy from the heater to the reservoir to preheat the reservoir. Rather, Wiedman shows a type of brewer referred to as a "burp and boil" brewer. The burp and boil brewer does not include any preheating elements and does not describe a preheating method. Rather, a heating element in the form of a resistance heating element tube is used to heat water from the reservoir for transfer to the brewing basket. The heating tube 54 is separated from the reservoir by layers of material and insulative air gap (35). While the warmed element (71) is provided to maintain a "warm serving temperature of beverage in the brewed beverage reservoir (16) (col. 5, lns. 1-3), nowhere in Weidman is there any teaching or suggestion of using the warmer to preheat prior to dispensing of beverage as required in each of the amended pending claims.

As noted in previous responses, the Steiner reference and the Bailleux et al. reference do not anticipate nor render obvious the claimed invention. This is evident as the Patent Office continues provide additional new references to assert in the present application.

The Steiner reference shows a server with a heater provided in a corner and unattached from the reservoir. Similarly, the Bailleux reference does not have a heating element attached to the outside surface of the reservoir.

In one rejection, claims 1-20 are rejected as being unpatentable over Steiner in view of Weidman. Applicant respectfully asserts that the combination of Steiner and Weidman does not teach the claimed invention. Rather, Steiner and Weidman teach away from the claimed invention by providing insulating air gaps and divergent heating technologies. The teachings of Steiner require heating an outside envelope in order to provide the desire heating results. In contrast, the heater as stated in the Office action with reference to Weidman to be similar to the claimed invention is used for providing heat to a dispensed beverage and not preheating the reservoir.

In another rejection, claims 1-3, 6-9 and 15-20 are rejected as being unpatentable based on the combination of Bailleux, Weidman, and Steiner. As noted above, the combination of Weidman and Steiner fails. Moreover, the addition of Bailleux is merely cumulative of the teachings in Weidman showing a heating tube used in a burp and boil system. Once again, Bailleux does not describe any additional teachings relating to preheating the reservoir nor any suggestions of using a heater as set forth in Weidman as a preheater. Rather, Bailleux also teaches using a device for maintaining the temperature of a dispensed beverage.

Finally, the last rejection rejects claims 1-4, 6-9 and 15-20 based on the combination of Weidman in view of Bailleux. In further support of the description as provided above, the combination of Weidman and Bailleux do not provide for a device which includes a heater

attached to a removable server which is used to preheat the server prior to dispensing beverage into the server. Neither of these references teaches preheating of the server.

With the foregoing in mind, Applicant respectfully asserts that the amended claims as set forth herein overcome and are allowable over the Examiner's rejections under 35 U.S.C. §103. If Applicant's understanding of the rejection on page 3, paragraph 1, is inconsistent with the Examiner's intent, Applicant respectfully requests the Examiner contact the undersigned attorney to discuss the nature of this rejection.

With the foregoing in mind, Applicant respectfully requests the Examiner withdraw the rejections under 35 U.S.C. §103 and allow the amended claims.

If there is any issue remaining to be resolved, the Examiner is invited to telephone the undersigned so that resolution can be promptly affected.

It is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg, Deposit Account No. 12-0913 (27726-93386).

Respectfully submitted,

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